

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

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08-7019 US v. Carlous Hood ( Voorhees )	<a href="#">Briefs</a>	SENTENCING. Whether district court has authority, pursuant to 18 U.S.C. Section 3582(c)(2) and Amendment 706, to reduce a defendant's sentence that is already below the statutory mandatory minimum due to a substantial assistance departure.
08-7715 US v. Larry Lindsey (Whitney )	<a href="#">Briefs</a>	SENTENCING. Whether district court correctly held that defendant was ineligible for a sentencing reduction pursuant to 18 U.S.C. Section 3582(c)(2) and Amendment 706 where defendant was granted significant downward departure in initial sentence.
08-1037 United States Securities and E v. Pirate Investor ( Garbis )	<a href="#">Briefs</a>	SECURITIES LAW: Whether Sec. 10(b) of the Securities Exchange Act reaches speech of an investment newsletter writer and his publisher; whether SEC met its burden of proof; whether injunction violates First Amendment.
07-2171 Barbara Forrester v. Penn Lyon Homes, ( Bailey )	<a href="#">Briefs</a>	ARBITRATION. Whether court erred by denying motion to compel arbitration; other issues.

Tuesday, December 02, 2008

PANEL I  
Courtroom 1  
Room 412 (Red Carpet)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

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08-0008      [Briefs](#)      HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.  
Justin Wolfe v. Gene Johnson  
( Jackson )

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08-4251      [Briefs](#)      CRIMINAL LAW & PROCEDURE. Whether a conviction for statutory rape under Va. Code Ann. Section  
US v. Michael Thornton      18.2-63 is a violent felony for purposes of the Armed Career Criminal Act.  
( Turk )

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08-1026      [Briefs](#)      TORT LAW: Issues regarding intentional tort action based on protest at soldier's funeral.  
Albert Snyder v. Fred Phelps, Sr.  
( Bennett )

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07-2102      [Briefs](#)      INSURANCE. Whether policy covered costs to correct damage caused by faulty workmanship.  
Stanley Martin Companies, Inco v. Ohio  
( Cacheris )

Tuesday, December 02, 2008

PANEL II  
Courtroom 2  
Room 201 (Green Carpet)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

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07-1102 Choi v. Lee ( Hilton )	<a href="#">Briefs</a>	CIVIL. Whether court erred by failing to give jury instructions defining an element of defamation; whether court erroneously excluded evidence that plaintiff threatened witnesses.
07-2038 Brian Schaffer v. Jerry Weast ( Messitte )	<a href="#">Briefs</a>	CIVIL. Whether the district court erred in finding that additional evidence was not material to determining whether appellee proposed an Individual Education Plan that was reasonably calculated to provide appellant with a Free Appropriate Public Education under IDEA; other issues.
07-2108 TFWS, Incorporated v. Peter Franchot ( Quarles )	<a href="#">Briefs</a>	ANTITRUST LAW: Whether Maryland laws regulating the distribution of alcoholic beverages were properly invalidated under federal antitrust law.

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Tuesday, December 02, 2008

PANEL III  
Courtroom 3  
Room 223 (Tan Carpet)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

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06-2162	<a href="#">Briefs</a>	HEALTH CARE QUALITY IMPROVEMENT ACT: Whether suspension without hearing violated physician's due process rights; other issues.
Rakesh Wahi v. John Does I-X ( Goodwin )		

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07-2031	<a href="#">Briefs</a>	LONGSHORE. Whether Board erred in reversing Administrative Law Judge's finding of additional hearing loss warranting benefits.
Arsenault v. BAE Systems Norfolk		

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08-1411	<a href="#">Briefs</a>	CIVIL. Propriety of summary judgment on products liability claims; other issues.
Assurance Company of America v. York ( Davis )		

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07-2176	<a href="#">Briefs</a>	CIVIL. Whether district court erred in granting defendants' motions to dismiss pursuant to Fed. R. Civ. P. 12(b)(6); other issues.
John Herman v. William Lackey, Jr. ( Mullen )		

Tuesday, December 02, 2008

PANEL IV  
Courtroom 4  
Room 414-D (Tweed Carpet)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

07-6137 US v. Jason Linder ( Jackson )	<a href="#">Briefs</a>	HABEAS CORPUS. Whether the district court erred in ruling Linder's conviction was final before Booker, and Booker was not available to Linder for post-conviction relief on his Sixth Amendment claim.
07-1482 Xiu Chen v. Michael Mukasey	<a href="#">Briefs</a>	IMMIGRATION. Whether Board erred in finding that petitioners failed to demonstrate well-founded fear of forced sterilization in China; whether IUD insertion constituted persecution.
07-1874 Maryland Property Associates, v. Colombo Bank ( Quarles )	<a href="#">Briefs</a>	BANKRUPTCY LAW: Challenge to rulings in action by trustee to avoid and recover fraudulent conveyances and preferential transfers.
07-2191 Aysha Unus v. David Kane ( Brinkema )	<a href="#">Briefs</a>	BIVENS. Qualified immunity; other issues related to search of plaintiffs' home pursuant to search warrant.

REVD 12/1/2008

Wednesday, December 03, 2008

PANEL I  
Courtroom 1  
Room 412 (Red Carpet)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

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08-0003	<a href="#">Briefs</a>	HABEAS CORPUS. Numerous issues arising out of state capital murder conviction and sentencing.
Paul Powell v. Loretta Kelly		
( Ellis )		

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08-4110	<a href="#">Briefs</a>	CRIMINAL LAW & PROCEDURE. Whether placement of video camera on defendant's field without a warrant violated Fourth Amendment; whether sufficient evidence established unlawful taking of migratory bird.
US v. Steve Vankesteren		
( Smith )		

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05-7382	<a href="#">Briefs</a>	HABEAS CORPUS. Whether petitioner was erroneously classified as parole ineligible and whether said classification violated his Fourteenth Amendment rights.
Townes v. Jarvis		
( Hilton )		

REVD 12/1/2008

Wednesday, December 03, 2008

PANEL II  
Courtroom 2  
Room 201 (Green Carpet)  
8:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

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07-1820      [Briefs](#)      BANKRUPTCY.    Whether bankruptcy court properly granted summary judgment in favor of debtor.  
BNX Systems Corp v. Worldwide Investigat  
( Hilton )

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07-1966      [Briefs](#)      CIVIL. Whether Health Care Quality Improvement Act immunizes appellees from appellant's damage  
Moore v. Williamsburg Region      claim; other issues.  
( Wooten )

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07-2054      [Briefs](#)      CIVIL RIGHTS:    Whether use of force during arrest violated Fourth Amendment; other issues.  
Millie Cloaninger v. John McDevitt  
( Howell )

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07-1834      [Briefs](#)      TAX.    Whether the tax court's calculation of appellant's taxable income was clearly erroneous; other  
McHan v. Commissioner      issues.

Wednesday, December 03, 2008

PANEL III  
Courtroom 3  
Room 223 (Tan Carpet)  
9:30 a.m.

REVD 12/1/2008

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

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07-2159	<a href="#">Briefs</a>	CIVIL. Whether reduction of damages payable as uninsured motorist benefits by amounts paid by medpay benefits constitutes a set-off, subrogation, or assignment prohibited by S.C. Code Ann. Sections 38-77-144, 38-77-160 or public policy.
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07-1848	<a href="#">Briefs</a>	CONTRACT LAW: Numerous issues relating to trial and to damages awards.
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07-2040	<a href="#">Briefs</a>	ERISA: Whether 204(h) notice met statutory requirements; if not, whether the failure was egregious.
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07-2165	<a href="#">Briefs</a>	ERISA. Whether insurer entitled to offset of disability payments based on workers compensation award for different condition.

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Wednesday, December 03, 2008

PANEL IV  
Courtroom 4  
Room 414-D (Tweed Carpet)  
9:30 a.m.



UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

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07-1959 US v. Buk ( Lee )	<a href="#">Briefs</a>	FORFEITURE LAW: Whether claimant was entitled to recover forfeited property under a bailment or constructive trust theory.
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07-1892 Van Alstyne v. Electronic Script ( Brinkema )	<a href="#">Briefs</a>	STORED COMMUNICATIONS ACT: Whether actual damages must be proven in order to recover compensatory and punitive damages under the Act; other issues.
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07-2094 Nicole Robinson v. Equifax Information Services, ( Lee )	<a href="#">Briefs</a>	FEDERAL PROCEDURE: Numerous issues relating to trial rulings and award of attorney's fees against credit reporting bureau regarding handling of identity theft.
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Thursday, December 04, 2008

PANEL I  
Courtroom 1  
Room 412 (Red Carpet)  
9:30 a.m.

REVD 12/1/2008

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

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07-2099	<a href="#">Briefs</a>	ADA. Whether statute supports action against city for failing to properly train police to deal with mentally ill in hostage situation.
Waller v. City of Danville VA ( Kiser )		

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08-1424	<a href="#">Briefs</a>	CIVIL. Whether appellee's digital archiving of student papers constituted fair use under copyright law; whether cross-appellant failed to present evidence of economic damages to support claim under Computer Fraud and Abuse Act.
A. V. v. iParadigms, LLC ( Hilton )		

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07-1888	<a href="#">Briefs</a>	EEOC. Whether filing of motion to reconsider EEOC decision affects the 90-day statutory deadline.
Phillip Cochran v. Michael Mukasey ( Cacheris )		

Thursday, December 04, 2008

PANEL II  
Courtroom 2  
Room 201 (Green Carpet)  
9:30 a.m.

REVD 12/1/2008

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

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07-2154	<a href="#">Briefs</a>	CIVIL. Whether the district court erred in denying plaintiff's request for equitable relief on the ground that it would constitute double recovery.
Richard Berman v. Curt Johnson		
( Ellis )		

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07-2036	<a href="#">Briefs</a>	CIVIL. Evidentiary ruling prior to summary judgment; contract and fiduciary duty claims.
Slavchev v. Royal Caribbean		
( Quarles )		

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08-1009	<a href="#">Briefs</a>	CIVIL. Whether district court's order deferring consideration of qualified immunity pending discovery is immediately appealable.
H.H. v. Wanda Moffett		
( Williams )		

Thursday, December 04, 2008

PANEL III  
Courtroom 3  
Room 223 (Tan Carpet)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

07-4476 US v. Jerry Gaskill ( Boyle )	<a href="#">Briefs</a>	SENTENCING. Whether the district court erred by imposing a variance sentence below the advisory guidelines range; standard of review.
08-1132 Harleysville Mutual Insurance v. Jennie Davis ( Nickerson )	<a href="#">Briefs</a>	CIVIL. Whether district court erred in concluding that insurer failed to rebut presumption of permissive use of loaner automobile.
08-1350 Sherry Pressley v. Tupperware Long Term ( Wooten )	<a href="#">Briefs</a>	ERISA. Whether statute of limitations in South Carolina for claim under 29 U.S.C. Section 1132(c)(1)(b) is three years; other issues.
08-1153 Media General Operations, Inco v. NLRB	<a href="#">Briefs</a>	LABOR LAW: Whether substantial evidence supports finding that company violated the NLRA by discharging employee who made derogatory reference about company officer.

Thursday, December 04, 2008

PANEL IV  
Courtroom 4  
Room 414-D (Tweed Carpet)  
9:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

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07-5153      [Briefs](#)      CRIMINAL LAW & PROCEDURE.    Propriety of refusal to give proposed jury instruction; other issues.  
US v. Bertrand Miles  
( Hudson )

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07-2022      [Briefs](#)      CIVIL RIGHTS.    Challenge to grant of summary judgment in 42 U.S.C. Section 1983 suit against county  
Wolf v. Fauquier Cnty Bd Sup    officials involving abrogation of parental rights; other issues.  
( Cacheris )

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07-4715      [Briefs](#)      CRIMINAL LAW & PROCEDURE.    Whether substantial upward departure from advisory guidelines  
US v. Toby Heath    range yielded reasonable sentence.  
( Boyle )

Friday, December 05, 2008

PANEL I  
Courtroom 1  
Room 412 (Red Carpet)  
8:30 a.m.

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

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07-4146 US v. David L. Howard ( Conrad )	<a href="#">Briefs</a>	CRIMINAL LAW & PROCEDURE. Propriety of district court's denial of motion to suppress, motion for mistrial, evidentiary rulings, and sentencing; other issues.
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07-4763 US v. Terry Layton ( Osteen )	<a href="#">Briefs</a>	CRIMINAL LAW & PROCEDURE. Whether district court erred in finding the defendant distributed child pornography under USSG Section 2G2.2(b) and in sentencing him to 97 months in prison and six years supervised release.
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07-4727 US v. Derrick Perry ( Flanagan )	<a href="#">Briefs</a>	CRIMINAL LAW & PROCEDURE. Denial of suppression motion regarding evidence and statements; sufficiency; jury instructions; sentencing issues.

Friday, December 05, 2008

PANEL II  
Courtroom 2  
Room 201 (Green Carpet)  
8:30 a.m.

REVD 12/4/2008

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

07-6152 Charles Willenbring v. US ( Howard )	<a href="#">Briefs</a>	COURT MARTIAL. Whether military court had jurisdiction over Willenbring.
07-5137 US v. Robert Fields ( Seymour )	<a href="#">Briefs</a>	CRIMINAL LAW & PROCEDURE. Correction of sentence to reimpose fine after resentencing upon remand.
07-1544 Fernando Quinteros-Mendoza v. Michael	<a href="#">Briefs</a>	IMMIGRATION. Whether the Court has jurisdiction to review petitioner's claim that the Board violated its own regulations in assigning his case to a single Board member rather than a three-member panel.
07-4791 US v. Jesus E. Antonio ( Hilton )	<a href="#">Briefs</a>	CRIMINAL LAW & PROCEDURE. Standard of review for Kimbrough error not raised in the district court; whether this case should be remanded for resentencing.

Friday, December 05, 2008

PANEL III  
Courtroom 3  
Room 223 (Tan Carpet)  
8:30 a.m.

REVD 12/1/2008

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT  
Richmond, VA  
(12/02/2008 - 12/05/2008 Session)

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07-1401                      [Briefs](#)  
MCImetro Access Transmission S v. Christie  
( Spencer )

TELECOMMUNICATIONS LAW. Whether federal law preempts State Corporation Commission from imposing condition on merger of telecommunications companies.

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07-1220                      [Briefs](#)  
US v. Custer Battles, LLC  
( Ellis )

FALSE CLAIMS ACT. Numerous challenges to district court's rulings in suit alleging government contractor fraud.

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07-5028                      [Briefs](#)  
US v. Scott W. Thompson  
( Friedman )

CRIMINAL LAW & PROCEDURE. Whether district court plainly erred in enhancing sentence pursuant to 18 U.S.C. Section 3559(c) based upon its finding of fact at sentencing that appellant threatened to use a firearm or weapon during the robbery; other issues.

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07-4793                      [Briefs](#)  
US v. R. Thompson-Riviere  
( Payne )

CRIMINAL LAW & PROCEDURE. Whether district court abused its discretion in denying motion to withdraw guilty plea to illegal reentry by a deported alien, based upon claim that newly discovered evidence demonstrates he is not an alien.

Friday, December 05, 2008

PANEL IV  
Courtroom 4  
Room 414-D (Tweed Carpet)  
8:30 a.m.